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Christine Bell: Getting to Maybe: Currency, Debt and the Pre-negotiation of Independence

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The UK government up until now has clearly stated that it is not going to 'pre-negotiate' the break up of the Union. Yet today the UK Chancellor George Osborne, along with support from the Labour and Liberal Democratic parties, has ruled out in advance a currency union.

In response the Scottish government has raised that they have a card to play: a possible refusal to take on a share of the UK's national debt.

So what is going on? Well it would seem a few polls are showing that support for independence may be on the rise. As a consequence it looks as if the no campaign that had adopted a tactical posture of a relaxed 'let Scotland decide', is shifting towards playing hard-ball – corporate chiefs, the Head of the Bank of England and now the Chancellor and all future UK Chancellors are all being sent to Edinburgh, and the Prime Minister has instructed the rest of the UK to face north and exude loving feelings. The Scottish government is wheeling out its best cannons in response.

There are several reasons why the new turn towards pre-negotiation is unfortunate and should be publicly resisted.

First, a crucial debate and negotiation over the economic future of both Scotland and rUK is not best had in sound bites and public declamatory speeches prior to any vote having taken place. It will have all sorts of costs.

Second, the Electoral Commission has said that people need to be informed as to the future consequences of their vote, and this style of campaigning in fact serves to dis-inform. Instead of a debate that explains the complexity of any negotiation to come, and lets people know what the legal bottom lines are, we have stories of a devastated Scottish economy, house price rises, Scottish rejection of any debt, and apoplectic visions of general economic carnage all round.

To explain it is worth considering a little further why opposition to a currency union is now apparently being nailed to the mast.

The shadow of international law

While recent poll results may have triggered the intervention, the u-turn from the governments 'no pre-negotiation' stance may also be related to the shadow of international law that places the debt issue as potentially the biggest card in the Scotland's post-referendum negotiating hand (as the Scottish government knows and so has emphasised).

Ruling out a currency union not only gives the 'no campaign' a key new argument, it can be understood as an attempt to tip the cards for any post-yes negotiations by strengthening the rUK's weak 'debt' hand by emphasising its strong currency hand.

Legally under international law the position is clear: if the remainder UK keeps the name and status of the UK under international law, it keeps its liabilities for the debt. The UK took out the debt, and legally it owes the money. Scotland cannot therefore 'default'. It can be argued that international law does, however, contemplate that on dividing, the two resulting states share out assets and liabilities equitably. However, it has no hard and fast formula for what constitutes equitable division. Tangible natural assets such as oil go with the territory they are in. But other matters – in particular debt - must be negotiated. What is equitable will depend on the overall result and context of the negotiation.

Some have argued – and the argument has been significant in North and South Sudan - that international law supports looking to where the debt money was spent as part of understanding what an equitable apportionment might be, although again this is legally controversial. Moreover, in most contexts that is a tangled equation to unravel: one can imagine the wrangling as to how Scotland may or may not have benefited with regard to past oil revenue losses as balanced by welfare state provision gains, etc.

Economists this morning have been making dire predictions as to Scotland 'defaulting on the debt' in response to the Scottish government raising debt in response to Osborne's currency speech. These economists seem to misunderstand the international legal position – but other states and markets in the event of a successful referendum would not. Were Scotland to do what every country would and should – use its negotiations to achieve an equitable solution in the round - then the world would not see a chancy defaulting new nation, but a country sensibly trying to achieve a stable economic future. And, curiously, at this point the UK's interests would not be to play hard-ball – they would be to end up with a negotiation outcome that left both countries in a strong and viable economic position.

The rUK would create substantial risks to its own economy if it negotiated the Scottish one into devastation. When Ireland got into financial trouble in the recent crisis and was bailed by the EU with the intervention of international financial institutions, it is quickly forgotten fact that with no Eurozone commitment, and no legal obligation, the UK also handed over its own significant bailout funds to the Irish, to no public or political opposition. Why? Well, Ireland is the UK's biggest export destination. With no Irish economy, the UK economy was likely to suffer drastic consequences. A bailout was cheap at the price, and everyone understood. The point is that the economies of close neighbours are closely linked whether there is a currency union or not, and it is in the interests of each that the other's economy succeeds.

Moreover, were the rUK be seen to be foolishly intransigent in the give or take of that negotiation it could affect its own position as regards the mysterious markets. To push negotiations into stalemate while bearing all the past UK debt alone until agreement was reached (as (formerly Northern) Sudan currently does having failed to reach agreement with its departing South two years on), might lead markets to conclude that sentimentality had replaced sound economic analysis, and respond correspondingly. Would you lend money to a country that made financial decisions with its heart rather than its head, even to its own detriment?

In fact, of course, it is unlikely that any rUK government would be so foolish. Again, the Irish example, while not completely apposite, is instructive. In the negotiations around Irish departure from the UK in the 1920s, debt negotiation was a key issue. The parties started by making fairly maximalist demands as to what part of UK debt it would assume as equitable, the UK claiming a full proportionate allocation, and

Ireland counter-claiming for a huge sum, including in-effect reparations for what it understood to be English wrecking of Irish industry from the point of Union in 1800.

An agreement was reached which saw Ireland assuming some debt that would have been a significant burden to the Irish economy but was much less than the original UK position. But in fact – and here of course the politics of the time also played a role – it was ultimately made to pay – well, a surprising £0.00. For the UK it was a no-brainer: in the context of that time the political and economic cost of requiring payment outweighed the cost of waiving it completely.

Currency, debt and the art of negotiation

It is not really in either side's interest to tell voters that on this issue there everything is to be negotiated. It is certainly not in the No campaign's interests to tell people that Scotland has significant cards in its hand in any further negotiation over currency union. It is not in the Scottish government's interests to point out how little it can lock down and promise about the economic future – or indeed many issues - in advance.

While both campaigns assert that this is about 'Yes' or 'No', Scotland becoming an independent country or not, in fact the situation is more complicated in our interdependent world.

The pre-negotiating positions of this week are an unfortunate and unwelcome campaigning development in this context. Negotiating experts tell us that people tend to adopt 'positional bargaining' because they think adopting strong exaggerated positions will get them to a compromise in the mid-way position that they would be prepared to accept. However, it is a high stakes way to negotiate that more often goes disastrously wrong. 'False positions' in which each party misrepresents what it would really settle for, become difficult to back down from later, even when that position is detrimental to the party holding it. In contexts where both sides benefit from the best on-going relationship possible, the cost to the relationship of positional bargaining can be even more significant.

In contrast, the more parties focus on common interests and ways of ensuring that they both win, the better the result for both in both actual and relationship terms. It would do all the parties good to bear in mind that all possible futures remain open until the 18th of September, and that whatever way the vote goes, life after that date has to go on. The campaign does not become a distant memory whereby everyone laughs and says 'oh yes, you really over-egged the pudding on that one, ha, ha'. Like any marriage, false positions and bitter words linger to infect the relationship (and in worse case scenarios the divorce terms), for a long time to come. Mark Carney seemed to realise this when, on his trek to Edinburgh, in contrast to the media trailing of his speech, he sensibly decided to pull his punches by saying very little at all, choosing instead to leave all his relationships in place for the future.

Getting to 'Maybe'?

There is a great prize for the No campaign in the pre-negotiation currency tactic: its nuclear nature may indeed blast the yes campaign's apparent green shoots. But this is not the same as getting what you want, if what you want is a happy Scotland within your borders, or, in the event that that is not possible, a negotiation in which you best protect your interests.

There is also a spectacular danger of the tactic backfiring. The lasting message to voters could be that a yes vote merely opens up negotiations such as we are getting a glimpse of this week. People are not stupid. Ordinary people might realise that if there are complex negotiations still to come, they will still have on-going political capacity to influence any Scottish negotiation position (and the Scottish government has committed to an all-party team), as to what degree of independence from the UK they want and what terms they are prepared to accept. Against that they may weigh up how their political and economic aspirations will be met by a UK government, which after all is supposed to be their government at the minute, which is prepared to lay Scotland to waste on the very narrowly defined self-interest of the rest of the country, because they have 'no legal obligation' not to.

And instead of voting no, the people might simply decide to vote for 'maybe'. For on most of the issues the people care about, the secret neither campaign dares tell is: 'maybe' is what a yes vote could be if that was what the people wanted.

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